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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 TOWN & COUNTRY
12 PARTNERS,

13 Plaintiff,

14 vs.

15 ANNA ZARCO,
16 DOES 1-10,

17 Defendants.
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) Case No. SA CV 15-01743-JVS (KESx)

) ORDER REMANDING CASE TO
19 STATE COURT
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18 The Court *sua sponte* REMANDS this action to the California Superior Court
19 for the County of Orange for lack of subject matter jurisdiction, as set forth below.

20 On October 28, 2015, Anna Zarco (hereinafter referred to as “Defendant”),
21 having been sued in an unlawful detainer action in California state court, lodged a
22 Notice of Removal of that action in this Court (“Notice”) and also presented an
23 application to proceed *in forma pauperis*. (Dkt. Nos. 1, 4.) In the Notice, Defendant
24 contends that she is entitled to remove the case pursuant to 28 U.S.C. § 1443(1)
25 because she has been deprived of her right to due process and equal protection by the
26 application of California statutory provisions authorizing evictions in unlawful
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1 detainer proceedings. (Dkt. No.1 at 7.¹) Specifically, Defendant contends that
 2 Plaintiff has violated her rights under 42 U.S.C. §§ 1981 and 1982. (Id.)

3 “The right of removal is entirely a creature of statute and ‘a suit commenced in
 4 a state court must remain there until cause is shown for its transfer under some act of
 5 Congress.’” Syngenta Crop Protection, Inc. v. Henson, 537 U.S. 28, 32 (2002)
 6 (quoting Great Northern R. Co. v. Alexander, 246 U.S. 276, 280 (1918)). Where
 7 Congress has acted to create a right of removal, those statutes are strictly construed
 8 against removal jurisdiction. Id.; Nevada v. Bank of America Corp., 672 F.3d 661,
 9 667 (9th Cir. 2012); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

10 Unless otherwise expressly provided by Congress, a defendant may remove
 11 “any civil action brought in a State court of which the district courts of the United
 12 States have original jurisdiction.” 28 U.S.C. § 1441(a); Dennis v. Hart, 724 F.3d 1249,
 13 1252 (9th Cir. 2013). The removing defendant bears the burden of establishing federal
 14 jurisdiction. AbregoAbrego v. Dow Chemical Co., 443 F.3d 676, 682 (9th Cir. 2006);
 15 Gaus, 980 F.2d at 566-67. “Under the plain terms of § 1441(a), in order properly to
 16 remove [an] action pursuant to that provision, [the removing defendant] must
 17 demonstrate that original subject-matter jurisdiction lies in the federal courts.”
 18 Syngenta Crop Protection, 537 U.S. at 33. Failure to do so requires that the case be
 19 remanded, as “[s]ubject matter jurisdiction may not be waived, and . . . the district
 20 court must remand if it lacks jurisdiction.” Kelton Arms Condo. Owners Ass’n v.
 21 Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003). “If at any time before final
 22 judgment it appears that the district court lacks subject matter jurisdiction, the case
 23 shall be remanded.” 28 U.S.C. § 1447(c). It is “elementary that the subject matter
 24 jurisdiction of the district court is not a waivable matter and may be raised anytime
 25 by one of the parties, by motion or in the responsive pleadings, or sua sponte by the
 26 trial or reviewing court.” Emrich v. Touche Ross & Co., 846 F.2d 1190, 1194 n.2 (9th
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28 ¹ All citations to the Notice are to the CM/ECF pagination.

1 Cir. 1988).

2 **A. Federal Question Jurisdiction**

3 The underlying action is an unlawful detainer proceeding, arising under and
 4 governed by the laws of the State of California. Defendant and Plaintiff entered into
 5 a commercial building lease. (Dkt. No. 1 at 26-31.) The state-court Complaint does not
 6 include any claim “arising under the Constitution, laws, or treaties of the United
 7 States.” 28 U.S.C. § 1331. Federal defenses or federal counterclaims do not provide
 8 a basis to remove an action which does not otherwise establish federal jurisdiction.
 9 “[T]he existence of federal jurisdiction depends solely on the plaintiff’s claims for
 10 relief and not on anticipated defenses to those claims.” ARCO Envtl. Remediation,
 11 L.L.C. v. Dept. of Health and Envtl. Quality, 213 F.3d 1108, 1113 (9th Cir. 2000). An
 12 “affirmative defense based on federal law” does not “render[] an action brought in
 13 state court removable.” Berg v. Leason, 32 F.3d 422, 426 (9th Cir. 1994). A “case
 14 may not be removed to federal court on the basis of a federal defense . . . even if the
 15 defense is anticipated in the plaintiff’s complaint, and even if both parties admit that
 16 the defense is the only question truly at issue in the case.” Franchise Tax Bd. v.
 17 Construction Laborers Vacation Trust, 463 U.S. 1, 14 (1983). There is no basis for
 18 federal question jurisdiction.

19 **B. Diversity Jurisdiction**

20 There is also no basis for diversity jurisdiction. Every defendant is not alleged
 21 to be diverse from every plaintiff. 28 U.S.C. § 1332(a). The Complaint does not allege
 22 damages in excess of \$75,000, and Defendant has not shown, by a preponderance of
 23 the evidence, that the amount in controversy requirement has been met. Id.; Abrego
 24 Abrego, 443 F.3d at 683. It is also apparent from the state-court records that the
 25 underlying unlawful detainer action is a limited civil action that does not exceed
 26 \$25,000. (Dkt. No.1 at 8, 18-35.) Indeed, Defendant admits, “THIS IS NOT BASED
 27 on grounds of diversity of citizenship, amount in controversy in excess of \$75,000
 28 does not apply.” (Id. at 8, 14.)

1 **C. 28 U.S.C. § 1443**

2 Section 1443(1) permits a defendant in state cases to remove the proceedings
3 to the federal district courts when a defendant is denied or cannot enforce in the courts
4 of such State a right under any law providing for the equal civil rights of citizens in
5 the United States. In order to successfully remove, the defendant must satisfy a two-
6 prong test: (1) the rights allegedly denied must arise under a federal law providing for
7 specific civil rights stated in terms of racial equality; and (2) the defendant must be
8 denied or unable to enforce the rights in state courts. Johnson v. Mississippi, 421 U.S.
9 213, 219 (1975); City of Greenwood, Miss. v. Peacock, 384 U.S. 808, 827-28 (1966);
10 Georgia v. Rachel, 384 U.S. 780, 792 (1966).

11 Under the first prong, constitutional or statutory provisions of general
12 applicability or under statutes not protecting against racial discrimination will not
13 suffice. Johnson, 421 U.S. at 219. Under the second prong, a defendant's federal
14 rights are left to the state courts except in rare situations where it can be clearly
15 predicted that those rights will inevitably be denied by the very act of bringing the
16 defendant to trial in state court. Peacock, 384 U.S. at 828.

17 While a violation of 42 U.S.C. §§ 1981 and 1982 may satisfy the first prong of
18 this test, Defendant cannot satisfy the second. Defendant alleges that she is being
19 discriminated against as a "female minority" and deprived of her rights to due process
20 and equal protection by the application of California statutory provisions authorizing
21 evictions in unlawful detainer proceedings. (Dkt. No. 1 at 4, 7.) She also asserts that
22 she will be unable to raise her federal claims in state court because state courts just
23 "rubberstamp" landlord's requests for relief. (Id. at 8-13.) These bare assertions are
24 insufficient to invoke the Court's jurisdiction. Defendant "must assert that the state
25 courts will not enforce [a specified federal] right, and that allegation must be
26 supported by reference to a state statute or a constitutional provision that purports to
27 command the state courts to ignore the federal rights." People of State of California
28 v. Sandoval, 434 F.2d 635, 636 (9th Cir. 1970). Defendant has failed to identify any

1 specific state statute or constitutional provision that commands the state courts to
 2 ignore her federal rights². See HSBC Bank USA v. Kubik, No. 13-1692, 2013 WL
 3 1694670, at *3 (C.D. Cal. Apr.16, 2013) (“Defendant Kubik does not, and cannot,
 4 identify any California state law or constitutional provision that commands state
 5 courts to ignore an amendment to the U.S. Constitution.”). Moreover, the allegations
 6 she does make are entirely conclusory in nature. Section 1443(1) will not provide
 7 jurisdiction where allegations of discrimination are conclusory and lacking factual
 8 basis. See Bogart v. California, 355 F.2d 377, 380-81 (9th Cir. 1966). Consequently,
 9 removal is not proper under § 1443(1).

10 **D. Conclusion**

11 This Court does not have subject matter jurisdiction over this case. IT IS
 12 THEREFORE ORDERED that this matter be REMANDED to the Superior Court of
 13 the State of California for the County of Orange.

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 15 DATED: November 18, 2015

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 18 JAMES V. SELNA
 UNITED STATES DISTRICT JUDGE

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 24 ² To the extent Defendant relies on California Civil Code §2924 in support of
 25 her allegation that she cannot enforce her equal protection and due process rights in
 26 the state court (Dkt. No. 1 at 7), she is mistaken. California Civil Code §2924 governs
 27 the private power of sale in a deed of trust and does not violate the constitutional
 28 guarantees of due process and equal protection. See Strutt v. Ontario Savings and
 Loan Association, 28 Cal. App. 3d 866, 877 (1972).